COURT'S ORDER WHETHER THE CASE IS OR NOT APPROVED FOR REPORTING

[Chapter VII, Rule 32 (2) (b)]

Description of Case.

Appeal From Order No. 178 of 2001
(Old FAFO No. 648/1993)

United India Insurance Co. Ltd.

Vs.

Smt. Sulochana Devi and others.

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(B.S. Verma, J.)

Initials of Judge

Date: 6th November 2006

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 178 Of 2001
Old FAFO No. 648 of 1993

United India Insurance Company Limited, Branch Astley Hall, Dehradun, through its Branch Manager.

…Appellant

Versus

1. Smt. Sulochana Devi W/O Late Sri Bhagat Ram,
2. Km. Sumangali Devi D/O Late Shri Bhagat Ram (minor).
3. Smt. Indira Devi W/O/ Late Shri Shankar Dutt.
   All residents of village Mathiyali, Tahsil Pratapnagar, District Tehri Garhwal C/O Sri T.R.Joshi, Court Compound, Dehradun. (Claimants).
4. Deep Ram Bhatt S/O Sri Pitamber Bhatt, R/O Adarsh Nagar, Near Tehri Bus Stand, Rishikesh.
5. Harsh Mani Sanwal S/O Shri Tulsi Ram Samwal R/O Village Undoli, P.O. Gadoliya, District Tehri Garhwal.

... Respondents.

Sri K.K.Sah, Advocate, learned counsel for the appellant.
Sri Anand Upadhyay, learned counsel for the respondent no.4.
Sri H.M.Raturi, Adv., learned counsel for the respondent no.5.

Date: November 06, 2006.
Hon'ble B.S. Verma, J.

This appeal under Section 30 of the Workmen's Compensation Act, 1923 (***for short the Act***) is directed against the judgment and award dated 30-3-1993 as amended by Order dated 3-4-1993 passed by the Workmen Compensation Commissioner U.P. Dehradun (***for short the Commissioner***) in W.C.A. No. 32 of 1987, Smt. Sulochana Devi and others Vs. Deep Ram Bhatt and others, whereby compensation of Rs. 83,192-00 along with interest @ 6% and penalty of Rs. 10,000/- was awarded in favour of the claimant and against the appellant-Insurance Company as mentioned in the impugned order. Aggrieved, the Insurance Company-appellant has come up in appeal.

Relevant facts of the case are that Smt. Sulochana Devi widow of late Bhagat Ram filed a claim petition before the learned Commissioner claiming compensation of Rs. 83,192/- for the accidental death of her husband in the course of employment, who was employed as driver with Deep Ram Bhatt, who is owner of vehicle no. UTS-168. The claim petition was registered after condoning the delay in filing the claim petition and notices were issued to the opposite parties. The owner of the vehicle Deep Ram Bhatt admitted that the deceased was employed as driver and he was paid wages @ Rs. 600/- per month. It was contended that the vehicle was duly insured with the United Insurance Company, therefore, the Insurance Company is liable to pay the compensation. It was also stated that the vehicle in question was sold to Harshmani Semwal prior to the date of accident in the name. Insurance Company contested the case and stated in its written statement that on account of transfer of vehicle to O.P. No.2, therefore, the insurance of Opposite Party No. 1 came to an end. The monthly wages of the deceased was also question.

On the pleadings of the parties, the learned Commissioner framed necessary issues in the case, recorded the evidence led by the parties, heard them and after perusing the evidence on record, came to the conclusion that the opposite party no.1 Deep Ram Bhatt is the registered owner of the vehicle on the date of accident. It was found that the deceased was under the employment of owner of the vehicle Deep Ram Bhatt. It was also held that the vehicle was duly insured with the Insurance Company. It was also held that the accident resulting in fatal injuries and death of the deceased driver occurred in the course of his employment. The learned Commissioner found that the age of the deceased Bhagat Ram was 30 years at the time of accident and his income was Rs. 1,000/- per month. Accordingly, as per provisions of the Act the impugned order dated 30-3-1993, the compensation of Rs.41,569-00 was awarded. Since there was calculation mistake in the award, therefore, vide order dated 30-4-1993, the award was amended and

compensation of Rs. 83,192-00 was awarded in favour of the claimant.

At the outset, it may be noted that the appeal under Section 30 of the Workmen's Compensation Act can be entertained only if there is involved any substantial question of law. In the memo of appeal, however, no substantial question of law has been formulated.

In the course of arguments, the learned counsel for the Insurance Company urged that the imposition of penalty of Rs. 10,000/- by the learned Commissioner is not maintainable against the insurer. It was submitted that the Insurance Company cannot be made liable for payment of penalty. This submission of the learned counsel for the appellant has some force. In my view insurance company is to pay the contractual liability of the insured, i.e. compensation and interest, and is not liable to pay penalty. I am fortified in my view by the Apex Court judgment in the case of ***L.R.Ferro Alloys Ltd. Vs. Mahavir Mahto and another [(2002)9 SCC, 450]*** wherein it was held in paragraph 5 that the compensation with interest is payable by the Insurance Company, but not the penalty. The same view was taken by the Division Bench of this Court in the case of ***"The New India Assurance Company Ltd. Vs. Smt. Meera Devi and another" [2006(1) U.D., 278]***. According, I hold that the appellant-insurer is not liable to pay the amount of penalty. The liability to pay penalty obviously rest upon the employer/owner of the vehicle. I therefore hold that the appellant insurance company shall not be liable to pay the amount of penalty, i.e. Rs. 10,000/-, which shall be paid by the employer/owner of the vehicle.

For the reasons aforesaid, the appeal preferred by the Insurance Company is liable to be partly allowed. The amount of penalty i.e. Rs. 10,000/- shall be payable by the employer/owner of

the vehicle, Deep Ram Bhatt. To this extent the impugned award is liable to be modified.

The appeal is partly allowed. The impugned award stands modified to the extent that the appellant-Insurance Company shall pay the compensation of Rs. 83,192/- along with interest to the claimant as ordered by the learned Commissioner. The amount of penalty of Rs. 10,000/- imposed by the Commissioner shall be paid by the employer Deep Ram Bhatt. No order as to costs.

Interim order dated 5-7-1993 passed by the Allahabad High Court stands vacated.

(B.S. Verma, J.)

RCP